

DURHAM CITY COUNCIL WORK SESSION
Thursday, February 6, 2014 – 1:00 p.m.
Committee Room – 2nd Floor – 101 City Hall Plaza

Present: Mayor William V. “Bill” Bell, Mayor Pro Tempore Cora Cole-McFadden and Council Members Eugene Brown, Diane Catotti, Eddie Davis, Don Moffitt and Steve Schewel. Absent: None.

Also present: City Manager Thomas J. Bonfield, City Attorney Patrick Baker and City Clerk D. Ann Gray.

The meeting was called to order by Mayor Bell. The Mayor said that earlier today the council was in a closed session seeking advice from the City Attorney and City Manager and discussion among council relative to a statement on future marching in the City of Durham. He asked City Manager Bonfield to read the prepared statement as follows:

A statement by the Durham City Council regarding future marches in the City of Durham

Dated February 6, 2014

Durham is one of the most progressive cities in the nation, and we are noted for our cherished understanding and appreciation of the rights of free speech and assembly to which all citizens are entitled under the First Amendment to the United States Constitution. Many of our Council members have participated in numerous public protest marches over the years for civil rights, justice and peace. So we welcome all of those who wish to participate in peaceful marches in our city.

We are saddened by the tragic death of Jesus Huerta, a young and promising 17-year old tenth grader at Riverside High School, and by the fact that his family has lost a son and a brother. Our prayers go out to them, and many of our members attended the moving and poignant service held in Jesus’ memory at Immaculate Conception Catholic Church.

Since the death of Jesus Huerta, three marches have been held during which some protestors have ignored both city ordinances and state statutes by marching at night without a permit, wearing camouflage masks, damaging both public and private property, and impeding traffic by marching in our streets. In addition, during the last three months, these marches have cost taxpayers over \$11,000 in vandalism, including window repairs (office and police vehicles) and graffiti removal, and approximately \$17,000-\$20,000 in overtime police protection. This does not include the intangible costs incurred because our officers and detectives could not perform their normally assigned functions that day.

The Durham community respects the laws of our city and state, and we appreciate our police department’s public safety efforts in an exceedingly difficult and challenging environment.

February 6, 2014

We embrace the open, constructive and sometimes difficult community discussion now taking place at the Human Relations Commission regarding police practices. We recognize that there is confusion and mistrust among some people concerning the death of Jesus Huerta and others. We welcome all peaceful and lawful expressions regarding any of these matters.

At the same time, we want to be absolutely clear that these issues do not provide any excuse or justification for engaging in violent or unlawful activities which represent the antithesis of the values which the people of Durham hold dear. We expect that such activities, if they occur, will be met by appropriate action by our police department. This City will neither condone nor tolerate any acts of violence or vandalism.

For clarity to all concerned, this City Council outlines the following rules of conduct based upon city ordinances and state statutes that all marchers must obey.

If and when our police department becomes aware of the potential for a march, the Council has the expectation that the department will pro-actively communicate about these rules to any potential marchers, if possible. We also expect that any police response to illegal activity at a march will be appropriate to the situation. The City Manager and his staff will evaluate the police response and keep the Council informed as necessary.

Rules of conduct:

Anyone wishing to march upon the public streets shall first obtain a parade permit from the City. Such parade permits only allow marching during daylight hours. Demonstrators shall not impede traffic upon the City streets and may not wear masks, hoods or devices which conceal the identity of the wearer, other than masks which are worn in accordance with state law which includes exceptions for seasonal events. Demonstrators shall not damage property, commit assaults, participate in disorderly conduct, possess or use pyrotechnics, or possess dangerous weapons including the possession of any object capable of inflicting serious bodily injury such as rocks, bricks, etc. Demonstrators shall not enter upon Police Department headquarters and substation parking areas or grassy areas immediately adjoining the Police Department headquarters and substation buildings.

At this time, the following action was taken by the Council:

Motion by Council Member Schewel seconded by Council Member Catotti to approve the statement by the Durham City Council Regarding Future Marches in the City of Durham was approved at 1:17 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Davis, Moffitt and Schewel. Noes: None. Absent: None.

Mayor Bell asked for priority items from the City Manager, City Attorney and City Clerk.

February 6, 2014

City Manager Bonfield stated that Agenda Item #12 – the public hearing for Impact Fee Appeal; Phillips Research Park Apartments needs to be deferred to the March 3, 2014 City Council Meeting at the request of the petitioner. Also, the City Manager provided a memo in response to questions raised at a recent work session pertaining to resurfacing Fayetteville Street.

The City Manager's items were accepted by the council.

There were no priority items from the City Attorney and City Clerk.

Mayor Pro Tempore Cole-McFadden asked the City Clerk to poll the members of the Procedures Committee to schedule a meeting within the next few weeks prior to a council work session.

After Mayor Bell announced each item on the printed agenda, the following items were pulled for discussion and/or comments:

Subject: John Tarantino

To receive comments from John Tarantino performing a musical satirical commentary.

Mr. Tarantino provided a musical satirical commentary.

Subject: Ad Hoc Coalition on Affordable Housing and Transit

To adopt a Resolution by the Durham City Council Supporting Affordable Housing around the Transit Stations and Neighborhood Transit Centers.

The staff report indicated that on December 19, 2013 the Ad Hoc Affordable Housing Committee proposed a resolution supporting measures to provide affordable housing in future transit areas, and the planning staff was requested to review that resolution.

It was noted that the Planning Department shares the concerns of the Affordable Housing Committee regarding access to affordable housing in future transit areas, and has already begun the process of implementing several of the requested action items. The planning staff believes that minor modifications to the proposed Ad Hoc Affordable Housing Committee resolution's objective can be achieved.

The planning staff is requesting support of a revised resolution which is being provided as part of the supporting information, which addresses the Ad Hoc Affordable Housing Committee's concerns regarding providing affordable housing for low-income residents in future transit areas, while recognizing the additional study and resource identification needed to accomplish the goal.

City Manager Bonfield noted that the County Commissioners considered this item on Monday, February 3rd and they are asking the council to consider working with them to develop a joint

February 6, 2014

statement in this regard with possible discussion at the March 11th Joint City/County Committee meeting.

Bo Glenn, representing the Ad Hoc Affordable Housing Committee, stated that Durham cannot compel developers to build affordable housing- rather, we must develop a program which will provide sufficient incentives so that they will want to build affordable housing. He said there intent is in no way to harm developers or to discourage development. Mr. Glenn said there is no one incentive that will work in every situation or at every station, rather there needs to be a tool box of incentives and suggested no tools be taken off the table, including land banking. He said there are a number of significant legal and policy reasons to diversify affordable housing throughout the transit line. He urged the council to have 15% affordable housing at all the transit stations and bus hubs, which is required by the state statute in existence at the present. Mr. Glenn said their resolution provides that the station area plans be completed in 3-5 years, if not sooner. He said in five years, TTA will be submitting the application for federal funding. The FTA requires affordable housing plans and policies specifically targeted to all station areas. After spending millions of taxpayer dollars, for environmental and engineering studies over the next five years, he said no one wants us to come up short because we have not adopted station area plans.

Council Member Schewel thanked the Ad Hoc Affordable Housing Committee for bringing this item forward.

Council Member Moffitt said he thought the 15% goal at each transit station was very good and important.

The City Council asked the City Manager to place this item on the agenda for the Joint City/County Committee meeting scheduled for Tuesday, March 11, 2014.

Subject: Bid Award for Martin Luther King, Jr. Parkway and Archdale Drive Signal Installation and Communications Cable Installation

To authorize the City Manager to execute a contract with Fulcher Electric of Fayetteville, Inc. in the amount of \$219,726.75 for the installation of a mast arm traffic signal at Martin Luther King, Jr. Parkway and Archdale Drive, and the installation of fiber optic communications cable along the Martin Luther King, Jr. Parkway corridor;

To establish a project contingency fund in the amount of \$32,959.01; and

To authorize the City Manager to negotiate change orders to the project provided the cost of the contract, including all change orders, does not exceed the total project cost of \$252,685.75.

The staff report indicated that the City of Durham Department of Transportation is requesting authorization to award a construction contract for the installation of a mast arm traffic signal at the intersection of Martin Luther King, Jr. Parkway and Archdale Drive. The construction

February 6, 2014

contract also includes the installation of fiber optic communications cable to interconnect six signalized intersections along the Martin Luther King, Jr. Parkway corridor and the Public Works Operations Center.

The Department of Transportation recommends City Council authorize the City Manager to execute a contract with Fulcher Electric of Fayetteville, Inc. to install a mast arm traffic signal and fiber optic communications cable for the amount of \$219,726.75 with a contingency of \$32,959.01 (15%). This results in a total project amount of \$252,685.76. Funds are budgeted for these improvements in the Capital Improvement Program's Miscellaneous Thoroughfares and Street Improvements project.

Upon completion of the project, the City Department of Transportation will operate and maintain the traffic signal and communications infrastructure.

Council Member Moffitt asked if Transportation considered alternatives to separate the construction costs of the Martin Luther King, Jr. Parkway and Archdale Drive traffic signal from the installation of the communications cable. He also requested a cost breakdown of the signal installation and communications cable.

The staff will provide follow-up to the questions raised at the work session prior to the February 17th meeting.

Subject: Durham Convention Center Annual Performance Results for Fiscal Year Ending June 30, 2013

To receive a presentation on the Durham Convention Center Annual Performance for fiscal year 2012-2013.

The staff report indicated that the City and County entered into a three year management contract with a two year option to renew with Global Spectrum for management of the Durham Convention Center beginning FY 2011/2012. Global Spectrum is currently in the third year of the five year management agreement.

Patrick Byker, Chair of the Durham Convention Center Authority, gave a power point presentation on this item as follows:

Management Agreement

- Management Agreement with Global Spectrum 3 year agreement with a 2 year renewal option-approved Spring 2011
- Management Fee \$103,000 (FY13)
- Management Agreement incentivizes Global to achieve further decreases and improve facility utilization: Financial Incentive: Up to 70% of maximum incentive fee;

February 6, 2014

Qualitative Incentive: Up to 30% of maximum incentive fee (Overall management performance; corporate citizenry; customer services; asset management)

Annual Operating Deficits

- Year FY08-09 – Operating Deficit (\$1,263,568)
- Year FY 09-10 – Operating Deficit (\$1,393,226)
- Year FY 10-11 - Operating Deficit (\$1,000,000)
- Year FY 11-12 - Operating Deficit (\$297,223)*
- Year FY 12-13 - Operating Deficit (\$104,069)*

*Significant decreases in owner subsidy year to date compared to prior management. FY 12/13 Owner operational subsidy - \$104,069 (budget: \$573,045)

Highlights

- Transparent management
- Maximized use of improved facility
- Customer service/food quality (FY 2011/12 annual score: 4.35; 2012/13 annual score: 4.47; 2013/14 – current scores: 4.77)
- Corporate citizenship/sponsorships

Marketing Initiatives

- Co-op marketing & tradeshow with DCVB
- Destination marketing with major local venues
- Digital signage advertising program
- DCC plaza and joint booking with Carolina Theatre & Armory expanding opportunities

Signature Events Held At Durham Convention Center

- Full Frame Film Festival
- Comicon & World Gaming Conference filled hotels throughout the city and brought over 24,000 guests to the downtown area using three venues

Community Involvement/Corporate Citizenship

- Global Spectrum continues to expand relationship with NCCU Hospitality Program
- Sponsorships for community events and organizations such as DCVB, Triangle Business Journal, City of Durham, Chamber and Non-Profit Organizations
- Hired 5 culinary students as prep cooks from the Art Institute & Chef's Academy
- Over 1,100 meals provided to Rescue Mission and/or Urban Ministries
- Adopted 4 children through Salvation Army for the holidays

Attendance By Event & Gross Revenues By Event

- Special Events – 49,563 (\$297,727)
- Banquets – 24,237 (\$1,039,279)
- Meetings – 13,900 (\$570,401)

February 6, 2014

- Consumer Shows – 13,357 (\$49,431)
- Conventions – 7,845 (\$431,771)
- Tradeshows – 3,305 (\$40,332)

Mr. Byker also referenced the net revenue mix and events year over year.

In summary, he presented the following challenges and opportunities:

- With the addition of new hotel(s) in the immediate area, Global Spectrum is working to develop relationships with key managers of the venues to position Durham as a viable convention destination
- Additional Parking
- Continuous relationship development with area stakeholders

The council thanked Mr. Byker for the report.

Subject: Roadside Solicitation

To adopt an Ordinance to Modify Restrictions on Sales and Solicitations in the Street Right-of-Way; and

To adopt an Ordinance to Restrict Unwanted Contact with and Intrusion into Occupied Vehicles on Roadways.

The staff report indicated that at the Work Session of November 7, 2013 the City Council considered a recommendation from the Homeless Services Advisory Committee to modify Ordinance 14375, adopted in December 2012, related to all roadside solicitation in the City limits. After discussion of the proposal the City Manager was directed to consider the input received and make recommendations as to possible modifications to roadside solicitation regulations. The proposed ordinance(s) clarify the locations where roadside solicitation is permitted, interactions permitted with passengers and drivers of vehicles being solicited, and provides for additional clarification prohibiting unwanted contact with drivers and vehicles. The proposed ordinance was forwarded to homeless services representatives for comment and received a generally favorable response.

The City Council requested clarification to the proposed changes to City Code Section 54-84(b) and to make the “unwanted contact” ordinance apply to convertibles and other motor vehicles without roofs, in addition to roofed motor vehicles.

Mayor Pro Tempore Cole-McFadden spoke in support of protecting residents. She said citizens should not have to look outside their doors seeing people who are panhandling.

The City Attorney’s Office will make the requested changes before the February 17th meeting.

February 6, 2014

Subject: Ground Lease Agreement between CPGPI Regency Erwin and the City of Durham

To authorize the City Manager to execute a Ground Lease Agreement with CPGPI Regency Erwin, LLC for a surface parking lot on Ninth Street pursuant to the terms of the lease agreement that includes an initial term of 5 years at a monthly base rent rate of \$6,875.00; and

To adopt an Ordinance to Set Fees for Parking in the Ninth Street Lot.

The staff report indicated that the purpose of this item is to enter into a lease agreement with CPGPI Regency Erwin, LLC for a surface parking lot on Ninth Street to provide public parking and to approve an ordinance to establish an hourly rate to park in the lot. The City has leased this parking lot from SEHED II, Ltd. since 1985 for an annual lease payment equal to the sum of the utility expense to light the parking lot and the City and County ad valorem taxes on the property (approximately \$3,000 per year). This lease agreement was terminated in May 2012 and the property was sold. The current owner, CPGPI Regency Erwin, LLC ("Regency") has agreed to lease the parking lot to the City for an initial term of 5 years commencing on March 1, 2014 at a monthly base rent rate of \$6,875 during the initial term, with two (2) additional five (5) year options to extend the term of the agreement for a total potential term of 15 years. The lease agreement allows the City to continue to make the lot available for public parking.

The recently completed Ninth Street Parking Study recommends charging to park in this lot. Accordingly, the attached Ordinance to Change Parking Fees establishes a rate of \$1.00 per hour to park in the lot between the hours of 8:00 am and 7:00 pm, Monday through Friday. This Parking Study also recommends the imposition of time limits for on-street parking in the Ninth Street area. Accordingly, it is further recommended that two hour time limits be imposed to park on Ninth, Iredell and Broad Streets between Main and Hillsborough and Perry Street between Hillsborough and Broad.

At this time the following citizens spoke on this item: Tom Campbell, Carol Anderson and Larry Wood encouraged the signing of the lease; however, they said city officials need to take steps to join them in preserving and moving Ninth Street forward by bolstering existing businesses before starting to charge for parking. They said paid parking would have a negative impact on the businesses in the area. In addition, a memo was provided to council from the Ninth Street Merchants Association regarding improvements and parking in the Ninth Street Business District.

Mayor Bell asked what is the timeframe in terms of the lease.

Transportation Director Mark Ahrendsen said the recommendation is to approve the execution of the lease effective March 1st.

Mayor Bell asked if the lease is started on March 1st, how soon could the meters be in place before collecting fees.

February 6, 2014

Transportation Director Mark Ahrendsen replied 6 weeks – to order and install.

Discussion was held on the synthetic tiff; free parking on Saturdays and Sundays; concerns of the east-side merchants; current signage on Ninth Street for parking; plans for Alley 8 and 9; sidewalk/lighting conditions on the east side of the street; not implementing fee for parking until the lot has been resurfaced and restriped; employee parking options; construction delays; status of façade program/possible policy change on adapting Ninth Street into façade program; timetable for duke employee/whole food employee parking; past incentives for merchants on the east side of Ninth Street; and the iconic nature of Ninth Street.

Mayor Bell said he supported the lease but he did not support free parking. Also, he supported the plan the administration brought forth and recognized other concerns that were mentioned. The Mayor asked the City Manager/administration to consider going back to the developer and deferring the lease payments maybe 3 months, and to allow the city to proceed with doing the milling and all of things they have in place.

Due to the concerns discussed regarding the timing of the parking lot improvements, employee parking, improvements to Alley 8 to provide a better pedestrian connection between Ninth Street and Iredell Street and a grant program for Ninth Street business owners, the staff will look into a revised ground lease agreement that maintains a March 1 start date but delaying the start of monthly lease payments.

[Excuse Mayor Pro Tempore Cole-McFadden]

Motion by Council Member seconded by Council Member to excuse Mayor Pro Tempore Cole-McFadden from the work session meeting.

The motion was approved unanimously at 3:46 p.m.

Subject: West Ellerbee Creek Trail-Phase II Status Update

To receive a presentation on the West Ellerbee Creek Trail – Phase II project status.

The staff report indicated that the West Ellerbee Creek stream bed has changed geographically since the original trail easements were acquired and the current restrictions on watershed stream buffers were adopted. These easements are no longer acceptable to build a Federal regulation surface transportation trail. A new design has been completed that shifts the alignment requiring new easements for construction. All approvals necessary for construction have been received, except for public works approval of Section 1 which is currently pending. However, some of the commercial property owners along the creek have stated that they are not interested in selling easements to the City.

After a status update presentation and Q&A at the December 18th Durham Open Space and Trails (DOST) Commission meeting, the Commission passed a motion to submit a resolution to City

February 6, 2014

Council supporting the concept of condemnation. The City is scheduled to receive \$1,081,600.00 of Federal funding for this project as part of the Congestion Mitigation and Air Quality Improvement Program (CMAQ). This funding is subject to Federal real estate acquisition requirements and regulations which may have a substantial impact on the schedule due to additional acquisition oversight and review by North Carolina Department of Transportation (NCDOT).

A representative from Stewart Engineering gave a power point presentation on this item commenting on the project status (design status; existing easement status; and property acquisition status); and the alternative evaluation.

Brett Pulliam, of the General Services Department, briefed council on the cost and funding of the Creek and Broad alignments; the land acquisition and timetable for the existing trail alignment and referenced the optional schedule for the alternate alignment (along Broad Street).

He noted the next steps: the decision making point of proceeding with existing trail alignment and acquisition (possible condemnation) or pursue alternate trail alignment.

Deputy City Manager Ferguson said the absent of a staff recommendation is primarily around the sensitivity of the condemnation issue. He said they understood going into this project that the Creek alignment was the preferred alignment which has been presented and discussed and DOST preferred. He said prior to any consideration that condemnation might be on the table the staff automatically pursued the alternate route design to have an option available. Deputy City Manager Ferguson also referenced the pros and cons of the Creek and Broad Street alignments.

Fred Lamar, of the City Attorney's Office, said the main issues with condemnation are litigation costs associated with any expert witness fees; appraisal fees; depositions if necessary; from both of the alignments.

Council Member Schewel spoke in support of the Creek alignment and noted the reasons why. He said he realized there were issues that needed to be discussed in closed session but speaking to people the preferred trail would be down the hill.

Council Member Moffitt raised concern with the stream of people using the trail along the creek.

Larry Brockman, a resident of Pennsylvania Avenue, spoke in support of the Creek alignment for the trail and noted several organizations; committees and neighborhoods that were also in support of this alignment.

Mayor Bell said obviously the council will not be making a decision today and reminded council of other matters needing to be discussed in a future closed session.

Settling the Agenda – February 17, 2014 City Council Meeting

February 6, 2014

Deputy City Manager Ferguson referenced the following items for the February 17, 2014 City Council Meeting agenda: Consent Items 1 thru 4 & 6 thru 9; GBA Item 5 and Public Hearings Items 13 thru 14.

Motion by Council Member Catotti seconded by Council Member Moffitt to settle the agenda for the February 17, 2014 City Council Meeting as stated by the Deputy City Manager.

The motion was approved by a vote of 6/0. (Mayor Pro Tempore Cole-McFadden was excused from the meeting earlier).

There being no further business to come before the council, the meeting was adjourned at 4:31 p.m.

D. Ann Gray, MMC, NCCMC
City Clerk